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SUBJECT: ECUADOR CONSTITUENT ASSEMBLY FINISHING IN OVERDRIVE

REF: A. QUITO 582
[1](#)B. QUITO 489
[1](#)C. QUITO 402

Classified By: Charge Doug Griffiths for reason 1.4 (D)

[1](#)1. (C) Summary: In a marathon session ending in the early hours today (July 24), the Constituent Assembly put the final touches on the new draft constitution that we expect will be approved this evening. Eighty percent of the constitutional articles were rushed through in the month of July. The draft text is a sprawling document of more than 400 articles that include a utopian expansion of rights and a tilt toward more state-centered development. Advocates contend the new constitution would guarantee citizens' rights and establish a more functional government, taking control away from self-interested elites. Critics argue that the constitution would confer excessive power on the Executive and question the presence of presidential delegates in the final sessions. Divisions within President Correa, s Proud and Sovereign Fatherland (PAIS) movement emerged in the final weeks of deliberations, greatly angering the President, who called dissenting members "infiltrators." (End summary)

[1](#)2. (C) The Constituent Assembly, now under Fernando Cordero's leadership (Ref A), is determined to meet the July 26 eight-month statutory deadline for drafting a new constitution, which will allow the referendum to be held September 28 as the GOE wants. During July, the Assembly gave final approval to 400 articles (compared to 94 that received final approval in previous months), plus last-minute changes to previously-approved text, four laws, more than ten mandates (temporary laws), and other resolutions. Assembly President Cordero appointed constitutional and linguistic experts to review the draft constitution and remove duplication and grammatical or other errors. The Assembly members received the draft with the experts' changes on July 19 (minus the preamble and transitory provisions). After consolidating language from different committees on related subjects, the final text contains 444 articles, almost two-thirds more than the 1998 constitution.

HIGHLIGHTS OF NEW CONSITUTION

[1](#)3. (C) The new constitution, like its predecessor, contains a mix of the idealist (even utopian) and the pragmatic. On the idealistic side, it makes a raft of promises intended to improve people's lives individually or collectively, with specific guarantees in areas like housing, education, employment and health that governments will likely in large part be unable to meet. For example, the disabled would be granted more rights, such as the right to specialized attention in public and private institutions, adequate housing, specialized education, and free psychological services. Social security benefits will be extended for citizens who perform unremunerated domestic work in their own

homes. Most of these provisions were not controversial.

¶4. (C) Not surprisingly, much of the constitution is written in such general or ambiguous terms that its impact will depend on how it is implemented. A number of articles in the new constitution bear a surprising resemblance to its 1998 predecessor.

¶5. (C) Under the constitution, Ecuador would have five branches of government, adding the social control/transparency function to the executive, legislative, judicial, and electoral functions in the 1998 constitution. Consistent with the rhetoric of Correa's "citizen revolution," the new function expands provisions for citizen input into government decision-making and citizen initiatives for popular consultation. Other key provisions include the requirement that property serve environmental as well as social functions, government control over strategic sectors of the economy, prohibitions on labor outsourcing and trafficking of persons in all of its forms, and a commitment to Latin American integration (Reftels).

¶6. (C) The Assembly fulfilled its promise to reorganize the administrative structure of the state. The leading cities of Quito and Guayaquil will be metropolitan districts. Provinces are given the option of uniting to form autonomous regions that meet specified criteria aimed at balance between the regions. The third largest province of Manabi sought vigorously to become a region on its own, but the minimum population required was set slightly too high to allow this, triggering the resignation of a PAIS committee president.

BALANCE OF POWERS

¶7. (C) Compared to the 1998 constitution, the new one would shift the balance of power somewhat toward the President. Leon Roldos (Ethics and Democracy Network, or RED), a former PAIS ally, reportedly dubbed the new system a "Correista monarchy." In a dramatic development, Roldos resigned from the Assembly on July 23 in protest of what he considers undue influence of the President. Others would argue that these changes are essential to prevent the deadlock that so often stymied government action over the past decade.

-- Following a trend common in other Latin American countries (including Colombia and Venezuela), the constitutional reform promoted by the incumbent president would allow him to run for immediate reelection, while the 1998 constitution required Presidents to stay out one term before seeking the office again. Since the new constitution resets the clock, this means Correa could potentially stay in office for a total of 10 years (two years now, plus two four-year terms), or until 2017.

-- The President would gain the power to dismiss the Congress. Not surprisingly in a country where the last three elected presidents were overturned by popular protest, often in tandem with the Congress, the new constitution spells out the circumstances under which the President could dismiss the Congress or vice versa (although the 2/3 vote requirement for Congress to impeach the President makes it more difficult to pull off). In either case, both presidential and congressional elections would have to follow.

-- Among other enhanced executive powers are formulating exchange, credit, and financial policies (while the Central Bank will just implement them); deciding on cases in which local communities oppose the exploitation of non-renewable natural resources; and proposing when to authorize entry of genetically-modified foods.

-- Limits on regional autonomy, including the revision of some municipal control over civil registries, ports, and airports have generated some controversy. Guayaquil mayor Jaime Nebot will center his campaign for a "no" vote around these concerns.

¶8. (SBU) The Constitutional Court would become the highest

judicial power (thus avoiding jurisdictional conflicts with the Supreme Court) and take on expanded responsibilities. The executive, the legislature, and the social control/transparency functions of the state would appoint two members each to a commission charged with selecting Constitutional Court justices. These same three functions of the state would also be the ones entitled to name the Constitutional Court candidates considered by this commission.

OVERNIGHT SESSIONS TO MEET DEADLINE

¶9. (C) The Constituent Assembly held a 20-hour plenary session July 18-19 where 104 requests to revise articles were resolved. Many members of the opposition chose to leave the session and others slept in the chamber. On average, 80 (out of 130) Assembly members were present to vote. During this session, PAIS introduced some changes to articles that had already been debated and approved. For example, the mechanism to appoint Superintendents (the head of key oversight institutions) was changed to favor the Executive, who will have the power to submit the names of the three candidates to the newly created Council of Participation and Transparency, which will make the final choice.

¶10. (C) The last-minute revisions and the presence on the floor during the July 18-19 session of executive officials like presidential legal advisor Alexis Mera sparked intense criticism by the opposition, who suspected Mera of personally writing the amended language. RED Assembly member Martha Roldos, for example, complained that "suddenly the text changed without debate", calling this unacceptable and a lack of respect for the Assembly's work over the past months. Mera's deputy told PolCouns on July 4 that his office was reviewing carefully all constitutional articles and highlighted the difficulty of securing the changes the Presidency sought without appearing too intrusive. Mera apparently didn't write all the amendments, however, because Correa complained later about some changes he considered unacceptable that he had not been aware of.

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¶11. (C) On July 23-24, bleary-eyed Assembly members took a slew of final actions in several more extended sessions. They approved the rules of transition, a 30-article document that lays out a scenario for the country's institutional framework if the constitution wins approval in the referendum, and another scenario in case it does not. They also made further last-minute changes in the constitutional text and approved a law and several mandates, some of which have not yet been posted on the Assembly website.

CRACKS IN THE PAIS FACADE

¶12. (C) Reflecting continued differences within PAIS, President Correa announced July 19 that after the referendum he would identify around 20 Assembly members who "infiltrated" PAIS and did not act according to the group's internal consensus. Correa's remarks triggered strong reactions. Former Assembly president Alberto Acosta stated that Correa joined the citizen revolution once it was already underway and called his words a rebuff. PAIS Assembly member Paco Velasco insisted that "We all have the right to think differently." After Correa's radio address, the media started to track down the PAIS votes and publish the names and pictures of Assembly members who voted against the PAIS consensus or abstained.

¶13. (C) The background to these strong words was a series of defections by a small number of PAIS members. Three PAIS decisions in particular generated sharp internal disagreement in recent weeks: not including Kichwa as an official language, reducing severance payments for teachers, and dismissing some of the 31 Supreme Court justices. Former Assembly president Acosta joined the PAIS defectors in all three cases. As a compromise, the Assembly decided July 23 to make Kichwa and Shuar (another indigenous language) "official languages of intercultural communication".

¶14. (C) An earlier dispute that remains bitter was the PAIS

decision not to require local communities' consent before starting non-renewable resources exploitation (antagonizing, among others, former Correa spokesperson Monica Chuji). Another controversy, the perceived ambiguity in the articles on protecting life from conception, caused two members to resign from the PAIS bloc (Ref C). On religious issues, President Correa, a devout Catholic and smart politician, has insisted that PAIS Assembly members agree to guarantee the right to life, invoke the name of God in the prologue, and prohibit civil unions for homosexuals, and was angry when some of more liberal PAIS Assembly members continued to challenge this. On July 24, the Assembly approved a preamble that invoked the name of God.

COMMENT

¶15. (C) The last stage of legislative processes is never pretty, and that of Ecuador's Constituent Assembly was no exception: messy and rushed, with squabbling over the final changes. Ecuador's draft constitution has it all - the well-intentioned and the politically motivated, elegant legal language and unclear, uninspired text - all produced by a diverse PAIS majority bloc in close coordination with the Executive and with an eye on the polls. Post will provide further analysis of the lengthy constitutional text and information on the transitory provisions in future cables.

CDA Griffiths